

# Union Calendar No. 67

108TH CONGRESS  
1ST SESSION

# H. R. 1474

**[Report No. 108–132]**

To facilitate check truncation by authorizing substitute checks, to foster innovation in the check collection system without mandating receipt of checks in electronic form, and to improve the overall efficiency of the Nation's payments system, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

MARCH 27, 2003

Ms. HART (for herself, Mr. FORD, Mr. FERGUSON, Mr. OXLEY, Mr. BACHUS, Mr. CROWLEY, Mr. JONES of North Carolina, Mr. ROYCE, Mrs. KELLY, Mr. TOOMEY, Mr. GILLMOR, Mr. HINOJOSA, Mr. LUCAS of Kentucky, Mr. ROSS, Mrs. MCCARTHY of New York, Mr. MCINTYRE, Ms. NORTON, and Mr. BOSWELL) introduced the following bill; which was referred to the Committee on Financial Services

JUNE 2, 2003

Additional sponsors: Mr. SHAYS, Mr. ALEXANDER, Mr. NEY, Ms. PRYCE of Ohio, Mr. SESSIONS, Mr. MOORE, Mr. CLAY, Ms. HARRIS, Mr. HENSARLING, Mrs. MALONEY, Mr. KENNEDY of Minnesota, Mr. RODRIGUEZ, Mr. CUNNINGHAM, Mr. KING of New York, and Mr. MURPHY

JUNE 2, 2003

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on March 27, 2003]

## A BILL

To facilitate check truncation by authorizing substitute checks, to foster innovation in the check collection system without mandating receipt of checks in electronic form, and to improve the overall efficiency of the Nation's payments system, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS; PURPOSES.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the*  
5 *“Check Clearing for the 21st Century Act”.*

6 (b) *FINDINGS.*—*The Congress finds as follows:*

7 (1) *In the Expedited Funds Availability Act, en-*  
8 *acted on August 10, 1987, the Congress directed the*  
9 *Board of Governors of the Federal Reserve System to*  
10 *consider establishing regulations requiring Federal re-*  
11 *serve banks and depository institutions to provide for*  
12 *check truncation, in order to improve the check proc-*  
13 *essing system.*

14 (2) *In that same Act, the Congress—*

15 (A) *provided the Board of Governors of the*  
16 *Federal Reserve System with full authority to*  
17 *regulate all aspects of the payment system, in-*

1       cluding the receipt, payment, collection, and  
2       clearing of checks, and related functions of the  
3       payment system pertaining to checks; and

4               (B) directed that the exercise of such author-  
5       ity by the Board superseded any State law, in-  
6       cluding the Uniform Commercial Code, as in ef-  
7       fect in any State.

8       (3) Check truncation is no less desirable today  
9       for both financial service customers and the financial  
10      services industry, to reduce costs, improve efficiency  
11      in check collections, and expedite funds availability  
12      for customers than it was over 15 years ago when  
13      Congress first directed the Board to consider estab-  
14      lishing such a process.

15      (c) *PURPOSES.*—The purposes of this Act are as fol-  
16      lows:

17              (1) To facilitate check truncation by authorizing  
18      substitute checks.

19              (2) To foster innovation in the check collection  
20      system without mandating receipt of checks in elec-  
21      tronic form.

22              (3) To improve the overall efficiency of the Na-  
23      tion's payments system.

1 **SEC. 2. DEFINITIONS.**

2 *For purposes of this Act, the following definitions shall*  
 3 *apply:*

4 (1) *ACCOUNT.*—*The term “account” means a de-*  
 5 *posit account at a bank.*

6 (2) *BANK.*—*The term “bank” means any person*  
 7 *that is located in a State and engaged in the business*  
 8 *of banking and includes—*

9 (A) *any depository institution (as defined*  
 10 *in section 19(b)(1)(A) of the Federal Reserve*  
 11 *Act);*

12 (B) *any Federal reserve bank;*

13 (C) *any Federal home loan bank; or*

14 (D) *to the extent it acts as a payor—*

15 (i) *the Treasury of the United States;*

16 (ii) *the United States Postal Service;*

17 (iii) *a State government; or*

18 (iv) *a unit of general local government*  
 19 *(as defined in section 602(24) of the Expe-*  
 20 *ditied Funds Availability Act).*

21 (3) *BANKING TERMS.*—

22 (A) *CLAIMANT BANK.*—*The term “claimant*  
 23 *bank” means a bank that submits a claim for re-*  
 24 *credit under section 7 to an indemnifying bank.*

1           (B) *COLLECTING BANK.*—The term “col-  
2           lecting bank” means any bank handling a check  
3           for collection except the paying bank.

4           (C) *DEPOSITARY BANK.*—The term “deposi-  
5           tary bank” means—

6                 (i) the first bank to which a check is  
7                 transferred, even if such bank is also the  
8                 paying bank or the payee; or

9                 (ii) a bank to which a check is trans-  
10                ferred for deposit in an account at such  
11                bank, even if the check is physically received  
12                and indorsed first by another bank.

13          (D) *PAYING BANK.*—The term “paying  
14          bank” means—

15                (i) the bank by which a check is pay-  
16                able, unless the check is payable at or  
17                through another bank and is sent to the  
18                other bank for payment or collection; or

19                (ii) the bank at or through which a  
20                check is payable and to which the check is  
21                sent for payment or collection.

22          (E) *RETURNING BANK.*—

23                (i) *IN GENERAL.*—The term “returning  
24                bank” means a bank (other than the paying

or depositary bank) handling a returned check or notice in lieu of return.

(ii) *TREATMENT AS COLLECTING BANK.*—No provision of this Act shall be construed as affecting the treatment of a returning bank as a collecting bank for purposes of section 4–202(b) of the Uniform Commercial Code.

(4) *BOARD.*—The term “Board” means the Board of Governors of the Federal Reserve System.

(5) *BUSINESS DAY.*—The term “business day” has the same meaning as in section 602(3) of the Expedited Funds Availability Act.

(6) *CHECK.*—The term “check”—

(A) means a draft, payable on demand and drawn on or payable through or at an office of a bank, whether or not negotiable, that is handled for forward collection or return, including a substitute check and a travelers check; and

(B) does not include a noncash item or an item payable in a medium other than United States dollars.

(7) *CONSUMER.*—The term “consumer” means an individual who—

1           (A) *with respect to a check handled for forward*  
 2           *collection, draws the check on a consumer*  
 3           *account; or*

4           (B) *with respect to a check handled for re-*  
 5           *turn, deposits the check into, or cashes the check*  
 6           *against, a consumer account.*

7           (8) *CONSUMER ACCOUNT.—The term “consumer*  
 8           *account” has the same meaning as in section 602(10)*  
 9           *of the Expedited Funds Availability Act.*

10          (9) *CUSTOMER.—The term “customer” means a*  
 11          *person having an account with a bank.*

12          (10) *FORWARD COLLECTION.—The term “for-*  
 13          *ward collection” means the transfer by a bank of a*  
 14          *check to a collecting bank for settlement or the paying*  
 15          *bank for payment.*

16          (11) *INDEMNIFYING BANK.—The term “indem-*  
 17          *nifying bank” means a bank that is providing an in-*  
 18          *demnity under section 5 with respect to a substitute*  
 19          *check.*

20          (12) *MICR LINE.—The terms “MICR line” and*  
 21          *“magnetic ink character recognition line” mean the*  
 22          *numbers, which may include the bank routing num-*  
 23          *ber, account number, check number, check amount,*  
 24          *and other information, that are printed near the bot-*

1        *tom of a check in magnetic ink in accordance with*  
 2        *generally applicable industry standards.*

3            (13) *NONCASH ITEM.*—*The term “noncash item”*  
 4        *has the same meaning as in section 602(14) of the*  
 5        *Expedited Funds Availability Act.*

6            (14) *PERSON.*—*The term “person” means a nat-*  
 7        *ural person, corporation, unincorporated company,*  
 8        *partnership, government unit or instrumentality,*  
 9        *trust, or any other entity or organization.*

10          (15) *RECONVERTING BANK.*—*The term “recon-*  
 11        *verting bank” means—*

12                (A) *the bank that creates a substitute check;*

13                *or*

14                (B) *if a substitute check is created by a per-*  
 15        *son other than a bank, the first bank that trans-*  
 16        *fers or presents such substitute check.*

17          (16) *SUBSTITUTE CHECK.*—*The term “substitute*  
 18        *check” means a paper reproduction of the original*  
 19        *check that—*

20                (A) *contains an image of the front and back*  
 21        *of the original check;*

22                (B) *bears a MICR line containing all the*  
 23        *information appearing on the MICR line of the*  
 24        *original check, except as provided under gen-*  
 25        *erally applicable industry standards for sub-*

1        *stitute checks to facilitate the processing of sub-*  
2        *stitute checks;*

3                *(C) conforms, in paper stock, dimension,*  
4        *and otherwise, with generally applicable indus-*  
5        *try standards for substitute checks; and*

6                *(D) is suitable for automated processing in*  
7        *the same manner as the original check.*

8        *(17) STATE.—The term “State” has the same*  
9        *meaning as in section 3(a)(3) of the Federal Deposit*  
10       *Insurance Act.*

11               *(18) TRUNCATE.—The term “truncate” means to*  
12       *remove an original paper check from the check collec-*  
13       *tion or return process and send to a recipient, in lieu*  
14       *of such original paper check, a substitute check or, by*  
15       *agreement, information relating to the original check*  
16       *(including data taken from the MICR line of the*  
17       *original check or an electronic image of the original*  
18       *check), whether with or without subsequent delivery of*  
19       *the original paper check.*

20               *(19) UNIFORM COMMERCIAL CODE.—The term*  
21       *“Uniform Commercial Code” means the Uniform*  
22       *Commercial Code in effect in a State.*

23               *(20) OTHER TERMS.—Unless the context requires*  
24       *otherwise, the terms not defined in this section shall*

1        *have the same meanings as in the Uniform Commer-*  
 2        *cial Code.*

3    **SEC. 3. GENERAL PROVISIONS GOVERNING SUBSTITUTE**  
 4        **CHECKS.**

5        (a) *NO AGREEMENT REQUIRED.*—A person may de-  
 6        *posit, present, or send for collection or return a substitute*  
 7        *check without an agreement with the recipient, so long as*  
 8        *a bank has made the warranties in section 4 with respect*  
 9        *to such substitute check.*

10       (b) *LEGAL EQUIVALENCE.*—A substitute check shall be  
 11       *the legal equivalent of the original check for all purposes,*  
 12       *including any provision of any Federal or State law, and*  
 13       *for all persons if the substitute check—*

14                (1) *accurately represents all of the information*  
 15        *on the front and back of the original check as of the*  
 16        *time the original check was truncated; and*

17                (2) *bears the legend: “This is a legal copy of*  
 18        *your check. You can use it the same way you would*  
 19        *use the original check.”.*

20        (c) *ENDORSEMENTS.*—A bank shall ensure that the  
 21        *substitute check for which the bank is the reconverting bank*  
 22        *bears all endorsements applied by parties that previously*  
 23        *handled the check (whether in electronic form or in the form*  
 24        *of the original paper check or a substitute check) for forward*  
 25        *collection or return.*

1       (d) *IDENTIFICATION OF RECONVERTING BANK.*—A  
 2 bank shall identify itself as a reconverting bank on any sub-  
 3 stitute check for which the bank is a reconverting bank so  
 4 as to preserve any previous reconverting bank identifica-  
 5 tions in conformance with generally applicable industry  
 6 standards.

7       (e) *APPLICABLE LAW.*—A substitute check that is the  
 8 legal equivalent of the original check under subsection (b)  
 9 shall be subject to any provision, including any provision  
 10 relating to the protection of customers, of part 229 of title  
 11 12 of the Code of Federal Regulations, the Uniform Com-  
 12 mercial Code, and any other applicable Federal or State  
 13 law as if such substitute check were the original check, to  
 14 the extent such provision of law is not inconsistent with  
 15 this Act.

16 **SEC. 4. SUBSTITUTE CHECK WARRANTIES.**

17       A bank that transfers, presents, or returns a substitute  
 18 check and receives consideration for the check warrants, as  
 19 a matter of law, to the transferee, any subsequent collecting  
 20 or returning bank, the depositary bank, the drawee, the  
 21 drawer, the payee, the depositor, and any endorser (regard-  
 22 less of whether the warrantee receives the substitute check  
 23 or another paper or electronic form of the substitute check  
 24 or original check) that—

1           (1) *the substitute check meets all the require-*  
 2           *ments for legal equivalence under section 3(b); and*

3           (2) *no depositary bank, drawee, drawer, or en-*  
 4           *dorser will receive presentment or return of the sub-*  
 5           *stitute check, the original check, or a copy or other*  
 6           *paper or electronic version of the substitute check or*  
 7           *original check such that the bank, drawee, drawer, or*  
 8           *endorser will be asked to make a payment based on*  
 9           *a check that the bank, drawee, drawer, or endorser*  
 10          *has already paid.*

11 **SEC. 5. INDEMNITY.**

12          (a) *INDEMNITY.*—*A reconverting bank and each bank*  
 13          *that subsequently transfers, presents, or returns a substitute*  
 14          *check in any electronic or paper form, and receives consid-*  
 15          *eration for such transfer, presentment, or return shall in-*  
 16          *demnify the transferee, any subsequent collecting or return-*  
 17          *ing bank, the depositary bank, the drawee, the drawer, the*  
 18          *payee, the depositor, and any endorser, up to the amount*  
 19          *described in subsections (b) and (c), as applicable, to the*  
 20          *extent of any loss incurred by any recipient of a substitute*  
 21          *check if that loss occurred due to the receipt of a substitute*  
 22          *check instead of the original check.*

23          (b) *INDEMNITY AMOUNT.*—

24               (1) *AMOUNT IN EVENT OF BREACH OF WAR-*  
 25          *RANTY.*—*The amount of the indemnity under sub-*

1        *section (a) shall be the amount of any loss (including*  
 2        *costs and reasonable attorney's fees and other expenses*  
 3        *of representation) proximately caused by a breach of*  
 4        *a warranty provided under section 4.*

5                (2) *AMOUNT IN ABSENCE OF BREACH OF WAR-*  
 6        *RANTY.—In the absence of a breach of a warranty*  
 7        *provided under section 4, the amount of the indem-*  
 8        *nity under subsection (a) shall be the sum of—*

9                        (A) *the amount of any loss, up to the*  
 10                      *amount of the substitute check; and*

11                      (B) *interest and expenses (including costs*  
 12                      *and reasonable attorney's fees and other expenses*  
 13                      *of representation).*

14                (c) *COMPARATIVE NEGLIGENCE.—If a loss described in*  
 15        *subsection (a) results in whole or in part from the neg-*  
 16        *ligence or failure to act in good faith on the part of an*  
 17        *indemnified party, then that party's indemnification under*  
 18        *this section shall be reduced in proportion to the amount*  
 19        *of negligence or bad faith attributable to that party.*

20                (d) *EFFECT OF PRODUCING ORIGINAL CHECK OR*  
 21        *COPY.—*

22                      (1) *IN GENERAL.—If the indemnifying bank pro-*  
 23        *duces the original check or a copy of the original*  
 24        *check (including an image or a substitute check) that*  
 25        *accurately represents all of the information on the*

1     *front and back of the original check (as of the time*  
 2     *the original check was truncated) or is otherwise suf-*  
 3     *ficient to determine whether or not a claim is valid,*  
 4     *the indemnifying bank shall—*

5             *(A) be liable under this section only for*  
 6             *losses covered by the indemnity that are incurred*  
 7             *up to the time the original check or such copy*  
 8             *is provided to the indemnified party; and*

9             *(B) have a right to the return of any funds*  
 10            *the bank has paid under the indemnity in excess*  
 11            *of those losses.*

12            *(2) COORDINATION OF INDEMNITY WITH IMPLIED*  
 13            *WARRANTY.—The production of the original check, a*  
 14            *substitute check, or a copy under paragraph (1) by an*  
 15            *indemnifying bank shall not absolve the bank from*  
 16            *any liability on a warranty established under this*  
 17            *Act or any other provision of law.*

18            *(e) SUBROGATION OF RIGHTS.—*

19            *(1) IN GENERAL.—Each indemnifying bank shall*  
 20            *be subrogated to the rights of any indemnified party*  
 21            *to the extent of the indemnity.*

22            *(2) RECOVERY UNDER WARRANTY.—A bank that*  
 23            *indemnifies a party under this section may attempt*  
 24            *to recover from another party based on a warranty*  
 25            *or other claim.*

1           (3) *DUTY OF INDEMNIFIED PARTY.*—*Each in-*  
 2           *demnified party shall have a duty to comply with all*  
 3           *reasonable requests for assistance from an indem-*  
 4           *nifying bank in connection with any claim the in-*  
 5           *demnifying bank brings against a warrantor or other*  
 6           *party related to a check that forms the basis for the*  
 7           *indemnification.*

8   **SEC. 6. EXPEDITED RECREDIT FOR CONSUMERS.**

9           (a) *RECREDIT CLAIMS.*—

10           (1) *IN GENERAL.*—*A consumer may make a*  
 11           *claim for expedited recredit from the bank that holds*  
 12           *the account of the consumer with respect to a sub-*  
 13           *stitute check, if the consumer asserts in good faith*  
 14           *that—*

15                   (A) *the bank charged the consumer's ac-*  
 16                   *count for a substitute check that was provided to*  
 17                   *the consumer;*

18                   (B) *either—*

19                           (i) *the check was not properly charged*  
 20                           *to the consumer's account; or*

21                           (ii) *the consumer has a warranty*  
 22                           *claim with respect to such substitute check;*

23                   (C) *the consumer suffered a resulting loss;*

24                   *and*

1                   (D) the production of the original check or  
 2                   a better copy of the original check is necessary  
 3                   to determine the validity of any claim described  
 4                   in subparagraph (B).

5                   (2) 30-DAY PERIOD.—Any claim under para-  
 6                   graph (1) with respect to a consumer account may be  
 7                   submitted by a consumer before the end of the 30-  
 8                   day period beginning on the later of—

9                   (A) the date on which the consumer receives  
 10                  the periodic statement of account for such ac-  
 11                  count which contains information concerning the  
 12                  transaction giving rise to the claim; or

13                  (B) the date the substitute check is made  
 14                  available to the consumer.

15                  (3) EXTENSION UNDER EXTENUATING CIR-  
 16                  CUMSTANCES.—If the consumer's ability to submit the  
 17                  claim within the 30-day period under paragraph (2)  
 18                  is delayed due to extenuating circumstances, includ-  
 19                  ing extended travel or the illness of the consumer, the  
 20                  30-day period shall be extended for a total not to ex-  
 21                  ceed 30 additional days.

22                  (b) PROCEDURES FOR CLAIMS.—

23                  (1) IN GENERAL.—To make a claim for an expe-  
 24                  dited recredit under subsection (a) with respect to a

1        *substitute check, the consumer shall provide to the*  
2        *bank that holds the account of such consumer—*

3                *(A) a description of the claim, including an*  
4                *explanation of—*

5                        *(i) why the substitute check was not*  
6                        *properly charged to the consumer's account;*

7                        *or*

8                        *(ii) the warranty claim with respect to*  
9                        *such check;*

10                *(B) a statement that the consumer suffered*  
11                *a loss and an estimate of the amount of the loss;*

12                *(C) the reason why production of the origi-*  
13                *nal check or a better copy of the original check*  
14                *is necessary to determine the validity of the*  
15                *charge to the consumer's account or the warranty*  
16                *claim; and*

17                *(D) sufficient information to identify the*  
18                *substitute check and to investigate the claim.*

19                *(2) CLAIM IN WRITING.—The bank holding the*  
20                *consumer account that is the subject of a claim by the*  
21                *consumer under subsection (a) may, in the discretion*  
22                *of the bank, require the consumer to submit the infor-*  
23                *mation required under paragraph (1) in writing.*

24                *(c) RECREDIT TO CONSUMER.—*

1           (1) *CONDITIONS FOR RECREDIT.*—*The bank shall*  
 2           *recredit a consumer account in accordance with para-*  
 3           *graph (2) for the amount of a substitute check that*  
 4           *was charged against the consumer account if—*

5                     (A) *a consumer submits a claim to the bank*  
 6                     *with respect to that substitute check that meets*  
 7                     *the requirement of subsection (b); and*

8                     (B) *the bank has not provided to the con-*  
 9                     *sumer the original check, a substitute check, or a*  
 10                    *copy of the original check and demonstrates that*  
 11                    *the substitute check was properly charged to the*  
 12                    *consumer's account.*

13           (2) *TIMING OF RECREDIT.*—

14                    (A) *IN GENERAL.*—*The bank shall recredit*  
 15                    *the consumer's account for the amount described*  
 16                    *in paragraph (1) no later than the end of the*  
 17                    *business day following the business day on which*  
 18                    *the bank determines the consumer's claim is*  
 19                    *valid.*

20                    (B) *RECREDIT PENDING INVESTIGATION.*—  
 21                    *If the bank has not yet determined that the con-*  
 22                    *sumer's claim is valid before the end of the 10th*  
 23                    *business day after the business day on which the*  
 24                    *consumer submitted the claim, the bank shall re-*  
 25                    *credit the consumer's account for—*

1                   (i) the lesser of the amount of the sub-  
 2                   stitute check that was charged against the  
 3                   consumer account, or \$2,500, together with  
 4                   interest if the account is an interest-bearing  
 5                   account, no later than the end of such 10th  
 6                   business day; and

7                   (ii) the remaining amount of the sub-  
 8                   stitute check that was charged against the  
 9                   consumer account, if any, together with in-  
 10                  terest if the account is an interest-bearing  
 11                  account, not later than the 45th calendar  
 12                  day following the business day on which the  
 13                  consumer submits the claim.

14               (d) AVAILABILITY OF RECREDIT.—

15               (1) NEXT BUSINESS DAY AVAILABILITY.—*Except*  
 16               *as provided in paragraph (2), a bank that provides*  
 17               *a recredit to a consumer account under subsection (c)*  
 18               *shall make the recredited funds available for with-*  
 19               *drawal by the consumer by the start of the next busi-*  
 20               *ness day after the business day on which the bank re-*  
 21               *credits the consumer's account under subsection (c).*

22               (2) SAFEGUARD EXCEPTIONS.—*A bank may*  
 23               *delay availability to a consumer of a recredit pro-*  
 24               *vided under subsection (c)(2)(B)(i) until the start of*  
 25               *either the business day following the business day on*

1       *which the bank determines that the consumer's claim*  
2       *is valid or the 45th calendar day following the busi-*  
3       *ness day on which the consumer submits a claim for*  
4       *such recredit in accordance with subsection (b),*  
5       *whichever is earlier, in any of the following cir-*  
6       *cumstances:*

7               (A) *NEW ACCOUNTS.—The claim is made*  
8               *during the 30-day period beginning on the busi-*  
9               *ness day the consumer account was established.*

10              (B) *REPEATED OVERDRAFTS.—Without re-*  
11              *gard to the charge that is the subject of the claim*  
12              *for which the recredit was made—*

13                   (i) *on 6 or more business days during*  
14                   *the 6-month period ending on the date on*  
15                   *which the consumer submits the claim, the*  
16                   *balance in the consumer account was nega-*  
17                   *tive or would have become negative if checks*  
18                   *or other charges to the account had been*  
19                   *paid; or*

20                   (ii) *on 2 or more business days during*  
21                   *such 6-month period, the balance in the con-*  
22                   *sumer account was negative or would have*  
23                   *become negative in the amount of \$5,000 or*  
24                   *more if checks or other charges to the ac-*  
25                   *count had been paid.*

1                   (C) *PREVENTION OF FRAUD LOSSES.*—*The*  
 2                   *bank has reasonable cause to believe that the*  
 3                   *claim is fraudulent, based on facts (other than*  
 4                   *the fact that the check in question or the con-*  
 5                   *sumer is of a particular class) that would cause*  
 6                   *a well-grounded belief in the mind of a reason-*  
 7                   *able person that the claim is fraudulent.*

8                   (3) *OVERDRAFT FEES.*—*No bank that, in accord-*  
 9                   *ance with paragraph (2), delays the availability of a*  
 10                   *recredit under subsection (c) to any consumer account*  
 11                   *may impose any overdraft fees with respect to drafts*  
 12                   *drawn by the consumer on such recredited amount be-*  
 13                   *fore the end of the 5-day period beginning on the date*  
 14                   *notice of the delay in the availability of such amount*  
 15                   *is sent by the bank to the consumer.*

16                   (e) *REVERSAL OF RECREDIT.*—*A bank may reverse a*  
 17                   *recredit to a consumer account if the bank—*

18                   (1) *determines that a substitute check for which*  
 19                   *the bank recredited a consumer account under sub-*  
 20                   *section (c) was in fact properly charged to the con-*  
 21                   *sumer account; and*

22                   (2) *notifies the consumer in accordance with sub-*  
 23                   *section (f)(3).*

24                   (f) *NOTICE TO CONSUMER.*—

1           (1) *NOTICE IF CONSUMER CLAIM NOT VALID.—If*  
2           *a bank determines that a substitute check subject to*  
3           *the consumer’s claim was in fact properly charged to*  
4           *the consumer’s account, the bank shall send to the*  
5           *consumer, no later than the business day following the*  
6           *business day on which the bank makes a determina-*  
7           *tion—*

8                     *(A) the original check or a copy of the origi-*  
9                     *nal check (including an image or a substitute*  
10                    *check) that—*

11                    *(i) accurately represents all of the in-*  
12                    *formation on the front and back of the*  
13                    *original check (as of the time the original*  
14                    *check was truncated); or*

15                    *(ii) is otherwise sufficient to determine*  
16                    *whether or not the consumer’s claim is*  
17                    *valid; and*

18                    *(B) an explanation of the basis for the de-*  
19                    *termination by the bank that the substitute check*  
20                    *was properly charged, including copies of any*  
21                    *information or documents on which the bank re-*  
22                    *lied in making the determination.*

23           (2) *NOTICE OF RECREDIT.—If a bank recredits a*  
24           *consumer account under subsection (c), the bank shall*  
25           *send to the consumer, no later than the business day*

1       *following the business day on which the bank makes*  
 2       *the recredit, a notice of—*

3               *(A) the amount of the recredit; and*

4               *(B) the date the recredited funds will be*  
 5       *available for withdrawal.*

6               *(3) NOTICE OF REVERSAL OF RECREDIT.—In ad-*  
 7       *dition to the notice required under paragraph (1), if*  
 8       *a bank reverses a recredited amount under subsection*  
 9       *(e), the bank shall send to the consumer, no later than*  
 10       *the business day following the business day on which*  
 11       *the bank reverses the recredit, a notice of—*

12               *(A) the amount of the reversal; and*

13               *(B) the date the recredit was reversed.*

14               *(4) MODE OF DELIVERY.—A notice described in*  
 15       *this subsection shall be delivered by United States*  
 16       *mail or by any other means through which the con-*  
 17       *sumer has agreed to receive account information.*

18               *(g) OTHER CLAIMS NOT AFFECTED.—Providing a re-*  
 19       *credit in accordance with this section shall not absolve the*  
 20       *bank from liability for a claim made under any other law,*  
 21       *such as a claim for wrongful dishonor under the Uniform*  
 22       *Commercial Code, or from liability for additional damages*  
 23       *under section 5 or 9.*

24               *(h) CLARIFICATION CONCERNING CONSUMER POSSES-*  
 25       *SION.—A consumer who was provided a substitute check*

1 *may make a claim for an expedited recredit under this sec-*  
 2 *tion with regard to a transaction involving the substitute*  
 3 *check whether or not the consumer is in possession of the*  
 4 *substitute check.*

5 (i) *SCOPE OF APPLICATION.—This section shall only*  
 6 *apply to customers who are consumers.*

7 **SEC. 7. EXPEDITED RECREDIT PROCEDURES FOR BANKS.**

8 (a) *RECREDIT CLAIMS.—*

9 (1) *IN GENERAL.—A bank may make a claim*  
 10 *against an indemnifying bank for expedited recredit*  
 11 *for which that bank is indemnified if—*

12 (A) *the claimant bank (or a bank that the*  
 13 *claimant bank has indemnified) has received a*  
 14 *claim for expedited recredit from a consumer*  
 15 *under section 6 with respect to a substitute check*  
 16 *or would have been subject to such a claim had*  
 17 *the consumer's account been charged;*

18 (B) *the claimant bank has suffered a result-*  
 19 *ing loss or is obligated to recredit a consumer ac-*  
 20 *count under section 6 with respect to such sub-*  
 21 *stitute check; and*

22 (C) *production of the original check, an-*  
 23 *other substitute check, or a better copy of the*  
 24 *original check is necessary to determine the va-*  
 25 *lidity of the charge to the customer account or*

1           *any warranty claim connected with such sub-*  
 2           *stitute check.*

3           (2) *120-DAY PERIOD.*—*Any claim under para-*  
 4           *graph (1) may be submitted by the claimant bank to*  
 5           *an indemnifying bank before the end of the 120-day*  
 6           *beginning on the date of the transaction that gave rise*  
 7           *to the claim.*

8           (b) *PROCEDURES FOR CLAIMS.*—

9           (1) *IN GENERAL.*—*To make a claim under sub-*  
 10          *section (a) for an expedited recredit relating to a sub-*  
 11          *stitute check, the claimant bank shall send to the in-*  
 12          *demnifying bank—*

13                 (A) *a description of—*

14                         (i) *the claim, including an explanation*  
 15                         *of why the substitute check cannot be prop-*  
 16                         *erly charged to the consumer account; or*

17                         (ii) *the warranty claim;*

18                 (B) *a statement that the claimant bank has*  
 19                 *suffered a loss or is obligated to recredit the con-*  
 20                 *sumer's account under section 6, together with*  
 21                 *an estimate of the amount of the loss or recredit;*

22                 (C) *the reason why production of the origi-*  
 23                 *nal check, another substitute check, or a better*  
 24                 *copy of the original check is necessary to deter-*

1           mine the validity of the charge to the consumer  
2           account or the warranty claim; and

3                   (D) information sufficient for the indem-  
4           nifying bank to identify the substitute check and  
5           to investigate the claim.

6           (2) *REQUIREMENTS RELATING TO COPIES OF*  
7           *SUBSTITUTE CHECKS.*—If the information submitted  
8           by a claimant bank pursuant to paragraph (1) in  
9           connection with a claim for an expedited recredit in-  
10          cludes a copy of any substitute check for which any  
11          such claim is made, the claimant bank shall take rea-  
12          sonable steps to ensure that any such copy cannot  
13          be—

14                   (A) mistaken for the legal equivalent of the  
15          check under section 3(b); or

16                   (B) sent or handled by any bank, including  
17          the indemnifying bank, as a forward collection  
18          or returned check.

19           (3) *CLAIM IN WRITING.*—An indemnifying bank  
20          may, in the bank's discretion, require the claimant  
21          bank to submit in writing the information required  
22          by paragraph (1), including a copy of the written  
23          claim, if any, that the consumer submitted in accord-  
24          ance with section 6(b).

25          (c) *REREDIT BY INDEMNIFYING BANK.*—

1           (1) *PROMPT ACTION REQUIRED.*—No later than  
 2           10 business days after the business day on which an  
 3           indemnifying bank receives a claim under subsection  
 4           (a) from a claimant bank with respect to a substitute  
 5           check, the indemnifying bank shall—

6                   (A) provide, to the claimant bank, the origi-  
 7                   nal check (with respect to such substitute check)  
 8                   or a copy of the original check (including an  
 9                   image or a substitute check) that—

10                           (i) accurately represents all of the in-  
 11                           formation on the front and back of the  
 12                           original check (as of the time the original  
 13                           check was truncated); or

14                           (ii) is otherwise sufficient to determine  
 15                           the bank's claim is not valid; and

16                   (B) recredit the claimant bank for the  
 17                   amount of the claim up to the amount of the sub-  
 18                   stitute check, plus interest if applicable; or

19                   (C) provide information to the claimant  
 20                   bank as to why the indemnifying bank is not ob-  
 21                   ligated to comply with subparagraph (A) or (B).

22           (2) *REREDIT DOES NOT ABROGATE OTHER LI-*  
 23           *ABILITIES.*—Providing a recredit under this sub-  
 24           section to a claimant bank with respect to a substitute  
 25           check shall not absolve the indemnifying bank from li-

1        *ability for claims brought under any other law or*  
 2        *from additional damages under section 5 or 9 with*  
 3        *respect to such check.*

4            (3) *REFUND TO INDEMNIFYING BANK.—If a*  
 5        *claimant bank reverses, in accordance with section*  
 6        *6(e), a recredit previously made to a consumer ac-*  
 7        *count under section 6(c), or otherwise receives a credit*  
 8        *or recredit with regard to such substitute check, the*  
 9        *claimant bank shall promptly refund to any indem-*  
 10       *nifying bank any amount previously advanced by the*  
 11       *indemnifying bank in connection with such substitute*  
 12       *check.*

13           (d) *PRODUCTION OF ORIGINAL CHECK OR A SUFFI-*  
 14       *CIENT COPY GOVERNED BY SECTION 5(d).—If the indem-*  
 15       *nifying bank provides the claimant bank with the original*  
 16       *check or a copy of the original check (including an image*  
 17       *or a substitute check) under subsection (c)(1)(A), section*  
 18       *5(d) shall govern any right of the indemnifying bank to*  
 19       *any repayment of any funds the indemnifying bank has*  
 20       *recredited to the claimant bank pursuant to subsection (c).*

21       **SEC. 8. DELAYS IN AN EMERGENCY.**

22           *Delay by a bank beyond the time limits prescribed or*  
 23       *permitted by this Act is excused if the delay is caused by*  
 24       *interruption of communication or computer facilities, sus-*  
 25       *pension of payments by another bank, war, emergency con-*

1 *ditions, failure of equipment, or other circumstances beyond*  
 2 *the control of a bank and if the bank uses such diligence*  
 3 *as the circumstances require.*

4 **SEC. 9. MEASURE OF DAMAGES.**

5 *(a) LIABILITY.—*

6 *(1) IN GENERAL.—Except as provided in section*  
 7 *5, any person who, in connection with a substitute*  
 8 *check, breaches any warranty under this Act or fails*  
 9 *to comply with any requirement imposed by, or regu-*  
 10 *lation prescribed pursuant to, this Act with respect to*  
 11 *any other person shall be liable to such person in an*  
 12 *amount equal to the sum of—*

13 *(A) the lesser of—*

14 *(i) the amount of the loss suffered by*  
 15 *the other person as a result of the breach or*  
 16 *failure; or*

17 *(ii) the amount of the substitute check;*

18 *and*

19 *(B) interest and expenses (including costs*  
 20 *and reasonable attorney's fees and other expenses*  
 21 *of representation) related to the substitute check.*

22 *(2) OFFSET OF RECREDITS.—The amount of*  
 23 *damages any person receives under paragraph (1), if*  
 24 *any, shall be reduced by the amount, if any, that the*

1        *claimant receives and retains as a recredit under sec-*  
 2        *tion 6 or 7.*

3        (b) *COMPARATIVE NEGLIGENCE.—If a person incurs*  
 4        *damages that resulted in whole or in part from the neg-*  
 5        *ligence or failure of that person to act in good faith, then*  
 6        *the amount of any liability due to that person under sub-*  
 7        *section (a) shall be reduced in proportion to the amount*  
 8        *of negligence or bad faith attributable to that person.*

9        **SEC. 10. STATUTE OF LIMITATIONS AND NOTICE OF CLAIM.**

10        (a) *ACTIONS UNDER THIS ACT.—*

11                (1) *IN GENERAL.—An action to enforce a claim*  
 12        *under this Act may be brought in any United States*  
 13        *district court, or in any other court of competent ju-*  
 14        *risdiction, before the end of the 1-year period begin-*  
 15        *ning on the date the cause of action accrues.*

16                (2) *ACCRUAL.—A cause of action accrues as of*  
 17        *the date the injured party first learns, or by which*  
 18        *such person reasonably should have learned, of the*  
 19        *facts and circumstances giving rise to the cause of ac-*  
 20        *tion.*

21        (b) *DISCHARGE OF CLAIMS.—Except as provided in*  
 22        *subsection (c), unless a person gives notice of a claim to*  
 23        *the indemnifying or warranting bank within 30 days after*  
 24        *the person has reason to know of the claim and the identity*  
 25        *of the indemnifying or warranting bank, the indemnifying*

1 *or warranting bank is discharged to the extent of any loss*  
 2 *caused by the delay in giving notice of the claim.*

3 *(c) NOTICE OF CLAIM BY CONSUMER.—A timely claim*  
 4 *by a consumer under section 6 for expedited recredit con-*  
 5 *stitutes timely notice of a claim by the consumer for pur-*  
 6 *poses of subsection (b).*

7 **SEC. 11. CONSUMER AWARENESS.**

8 *(a) IN GENERAL.—Each bank shall provide, in accord-*  
 9 *ance with subsection (b), a brief notice about substitute*  
 10 *checks that describes—*

11 *(1) the process of check substitution and how the*  
 12 *process may be different than the check clearing proc-*  
 13 *ess with which the consumer may be familiar; and*

14 *(2) a description of the consumer recredit rights*  
 15 *established under section 6 when a consumer believes*  
 16 *in good faith that a substitute check was not properly*  
 17 *charged to the consumer's account.*

18 *(b) DISTRIBUTION.—*

19 *(1) EXISTING CUSTOMERS.—With respect to con-*  
 20 *sumers that are customers of a bank on the effective*  
 21 *date of this Act, a bank shall provide the notice de-*  
 22 *scribed in subsection (a) to each such consumer no*  
 23 *later than the first regularly scheduled communica-*  
 24 *tion with the consumer after the effective date of this*  
 25 *Act.*

1           (2) *NEW ACCOUNT HOLDERS.*—A bank shall pro-  
 2       vide the notice described in subsection (a) to each con-  
 3       sumer, other than existing customers referred to in  
 4       paragraph (1), at the time at which the customer re-  
 5       lationship is initiated.

6           (3) *MODE OF DELIVERY.*—A bank may send the  
 7       notices required by this subsection by United States  
 8       mail or by any other means through which the con-  
 9       sumer has agreed to receive account information.

10       (c) *MODEL LANGUAGE.*—

11           (1) *IN GENERAL.*—No later than 1 year after the  
 12       date of enactment of this Act, the Board shall publish  
 13       model forms and clauses that a depository institution  
 14       may use to describe each of the elements required by  
 15       subsection (a).

16           (2) *SAFE HARBOR.*—A bank shall be treated as  
 17       being in compliance with the requirements of sub-  
 18       section (a) if the bank's substitute check notice uses a  
 19       model form or clause published by the Board and such  
 20       model form or clause accurately describes the bank's  
 21       policies and practices. A bank may delete any infor-  
 22       mation in the model form or clause that is not re-  
 23       quired by this Act or rearrange the format.

24           (3) *USE OF MODEL LANGUAGE NOT REQUIRED.*—  
 25       This section shall not be construed as requiring any

1        *bank to use a model form or clause that the Board*  
 2        *prepares under this subsection.*

3        **SEC. 12. EFFECT ON OTHER LAW.**

4        *This Act shall supersede any provision of Federal or*  
 5        *State law, including the Uniform Commercial Code, that*  
 6        *is inconsistent with this Act, but only to the extent of the*  
 7        *inconsistency.*

8        **SEC. 13. VARIATION BY AGREEMENT.**

9        (a) *SECTION 7.—Any provision of section 7 may be*  
 10       *varied by agreement of the banks involved.*

11       (b) *NO OTHER PROVISIONS MAY BE VARIED.—Except*  
 12       *as provided in subsection (a), no provision of this Act may*  
 13       *be varied by agreement of any person or persons.*

14       **SEC. 14. REGULATIONS.**

15       (a) *IN GENERAL.—The Board may, by regulation,*  
 16       *clarify or otherwise implement the provisions of this Act*  
 17       *or may modify the requirements imposed by this Act with*  
 18       *respect to substitute checks to further the purposes of this*  
 19       *Act, including reducing risk, accommodating technological*  
 20       *or other developments, and alleviating undue compliance*  
 21       *burdens.*

22       (b) *BOARD MONITORING OF CHECK COLLECTION AND*  
 23       *RETURN PROCESS; ADJUSTMENT OF TIME PERIODS.—*

1           (1) *MONITORING OF CHECK COLLECTION AND RE-*  
 2           *TURN PROCESS.—The Board shall monitor the extent*  
 3           *to which—*

4                     (A) *original checks are converted to sub-*  
 5                     *stitute checks in the check collection and return*  
 6                     *process, and*

7                     (B) *checks are collected and returned elec-*  
 8                     *tronically rather than in paper form.*

9           (2) *ADJUSTMENT OF TIME PERIODS.—The Board*  
 10           *shall exercise the Board’s authority under section*  
 11           *603(d)(1) of the Expedited Funds Availability Act to*  
 12           *reduce the time periods applicable under subsections*  
 13           *(b) and (e) of section 603 of such Act for making*  
 14           *funds available for withdrawal, when warranted.*

15           (c) *PUBLICATION OF SCHEDULE BY BOARD FOR*  
 16           *CHECK TRANSPORTATION SERVICES.—Section 11A(b) of*  
 17           *the Federal Reserve Act (12 U.S.C. 248a(b)) is amended—*

18                     (1) *by striking “and” at the end of paragraph*  
 19                     *(7);*

20                     (2) *by redesignating paragraph (8) as para-*  
 21                     *graph (9); and*

22                     (3) *by inserting after paragraph (7) the fol-*  
 23                     *lowing new paragraph:*

24                     “(8) *check transportation services; and*”.

1 **SEC. 15. EFFECTIVE DATE.**

2       *This Act shall take effect at the end of the 18-month*  
3 *period beginning on the date of the enactment of this Act,*  
4 *except as otherwise specifically provided in this Act.*

**Union Calendar No. 67**

108TH CONGRESS  
1ST SESSION

**H. R. 1474**

**[Report No. 108–132]**

---

---

**A BILL**

To facilitate check truncation by authorizing substitute checks, to foster innovation in the check collection system without mandating receipt of checks in electronic form, and to improve the overall efficiency of the Nation's payments system, and for other purposes.

---

---

JUNE 2, 2003

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed